

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
March 2006 Session

**KENNETH LEN JONES**

**v.**

**HEATHER MICHELE TAYLOR**

**v.**

**LELAND K. HATTABAUGH and JOY C. HATTABAUGH**

**An Extraordinary Appeal from the Chancery Court for Coffee County**  
**No. 05-150     Jerry Scott, Senior Judge**

---

**No. M2005-02772-COA-R10-CV - Filed: August 21, 2006**

---

This is a child custody dispute arising out of a divorce. The father filed a divorce petition in a Tennessee court seeking a divorce and full custody of the parties' child. The same day, the child's maternal grandparents filed a petition in an Indiana court seeking to be designated as temporary guardians of the child. Within a few days of the filing of the divorce action, the Tennessee court issued an injunction, enjoining the mother from interfering with the father's custody of the child. Eleven days later, the Indiana court entered an order granting the grandparents' petition for temporary guardianship. Subsequently, the grandparents filed a petition to intervene in the Tennessee divorce proceedings, seeking to have the custody dispute between mother and father dismissed on the basis that the Tennessee court lacked subject matter jurisdiction, pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act. The Tennessee court denied the grandparents' motion to dismiss, holding that it had jurisdiction to decide the custody issue. We affirm, finding that, pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, the Tennessee court had exclusive, continuing jurisdiction over the child custody dispute.

**Tenn. R. App. P. 10; Judgment of the Chancery Court is Affirmed**

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which ALAN E. HIGHERS, J., and DAVID R. FARMER, J., joined.

Craig Northcott, Tullahoma, Tennessee, for Appellants/Intervening Petitioners Leland K. Hattabaugh and Joy C. Hattabaugh.

H. Thomas Parsons, Manchester, Tennessee, for Appellee/Plaintiff/Respondent Kenneth Len Jones.

Cara E. Gruszecki-Smalley, Shelbyville, Tennessee, for Appellee/Defendant/Petitioner Heather Michele Taylor.

## OPINION

This is an extraordinary appeal pursuant to Rule 10 of the Tennessee Rules of Appellate Procedure. It concerns a dispute over the custody of a young child, T.M.J. (d/o/b February 2, 2003). T.M.J. is the biological son of Appellee/Plaintiff/Respondent Kenneth Len Jones (“Father”) and Appellee/Defendant/Petitioner Heather Michele Taylor (“Mother”). This dispute arose after Father filed a complaint for divorce against Mother in the Coffee County Chancery Court in Manchester, Tennessee. Subsequent to the filing of Father’s divorce petition, Mother’s natural father, Appellant/Intervenor/Petitioner Leland K. Hattabaugh, and Mother’s step-mother, Appellant/Intervenor/Petitioner Joy C. Hattabaugh (collectively, “Grandparents”), filed an intervening petition for custody of T.M.J. in the Coffee County Chancery Court.

At the time Father filed the divorce complaint, Mother and Father were residents of Tennessee and the Grandparents were residents of Indiana. The instant appeal arises out of the divorce proceeding, but implicates legal proceedings pending in other venues. In addition to the Tennessee divorce action, legal actions involving the custody of T.M.J. were concomitantly pending in two other courts. In Indiana, the Grandparents filed a petition seeking temporary guardianship of T.M.J. In Tennessee, Mother filed a petition in the General Sessions Court of Coffee County for an order of protection against Father, alleging that he had physically abused her.

At various times, the Grandparents had taken care of T.M.J. Mother and Father came to live with the Grandparents in Indiana when Mother was approximately four months pregnant; Father primarily resided with the Grandparents when he was not away working as an over-the-road truck driver. In February 2003, Mother gave birth to T.M.J. in Indiana while she was staying with the Grandparents. T.M.J. remained in Indiana with Mother and Father, living intermittently with the Grandparents, until he was about fourteen months old. Around that time, in approximately April 2004, T.M.J. moved to Tennessee and lived in Tennessee with Mother and Father until early March 2005.

In March 2005, Father sent T.M.J. to Indiana to reside with the Grandparents. From our review of the appellate record, it is unclear whether the Grandparents came to Tennessee to pick up the child or Father drove the child to Indiana.<sup>1</sup> Either way, T.M.J. was not in Tennessee when the legal proceedings at issue in this appeal were initiated.

Shortly after T.M.J. was removed to Indiana, Mother filed her petition in the Coffee County General Sessions Court seeking an order of protection, claiming that Father had physically assaulted her. On April 13, 2005, General Sessions Judge Jerry Ledsinger entered an order of protection for a period of one year. The General Sessions protective order is not included in the record on appeal, but later orders by the Coffee County Chancery Court refer to it. According to the Grandparents’

---

<sup>1</sup>During Joy Hattabaugh’s testimony, she vaguely recalled traveling to Murfreesboro, Tennessee, to pick up T.M.J. from Father and bring him back to Indiana.

appellate brief, in her General Sessions petition, Mother also sought an order setting a parenting schedule for T.M.J.

On April 1, 2005, Father filed his complaint for divorce against Mother in the Coffee County Chancery Court. The complaint stated that the parties were married in Coffee County, Tennessee, in June 2002. It also stated that both Father and Mother were residents of Coffee County, Tennessee. According to Father's complaint, the date the couple last resided in the same household was March 15, 2005. As grounds for divorce, Father alleged that Mother engaged in inappropriate marital conduct such that cohabitation was unsafe and improper. More specifically, Father averred that Mother had long battled an addiction to prescription drugs and had also used cocaine. Father sought a divorce, as well as a temporary restraining order enjoining Mother from interfering with Father's custody of T.M.J. Father filed a proposed parenting plan with the divorce petition, proposing that Father be designated the primary residential parent and that Mother's access to T.M.J. be limited to supervised visitation.

The same day that Father filed his complaint for divorce in the Coffee County Chancery Court, the Grandparents filed an Application for Temporary Guardianship of T.M.J. in the Washington County Circuit Court in Indiana.<sup>2</sup> In this petition, the Grandparents asked the Indiana court to appoint them as temporary guardians of T.M.J., asserting that Father had voluntarily placed T.M.J. in their care and that they had cared for T.M.J. from the time of his birth until April 2004, and then again from March 2005 to April 1, 2005. The Grandparents stated that they had, at Father's request, traveled to Tennessee to retrieve T.M.J. and bring him back to live in Indiana with them after Father and Mother separated. The Grandparents maintained that appointing them as T.M.J.'s temporary guardians was necessary to ensure that T.M.J. would receive necessary medical care during the time in which they had custody of the child.

On April 4, 2005, the Coffee County Chancery Court issued a temporary restraining order against Mother, as requested in Father's divorce complaint. The order enjoined Mother "from interfering with [Father's] custody of the minor child . . . pending a further hearing in this case."

On April 15, 2005, the Washington County Circuit Court in Indiana issued an order appointing the Grandparents as temporary guardians over T.M.J. The Indiana order stated that Judge Blanton of the Washington County Circuit Court had conducted a conference via telephone with General Sessions Judge Ledsinger, the Tennessee judge presiding over Mother's petition for a protective order, as well as Mother's counsel, Father's counsel, and the Grandparents' counsel. Based on this conference, the Indiana court made a number of factual findings. First, it noted that

---

<sup>2</sup> Several important court documents, including the Indiana application for temporary guardianship, were not included in the record presented to this Court on appeal. Instead, they were attached to the Grandparents' appellate brief. Under ordinary circumstances, this Court will not consider or review the contents of documents not made a part of the record on appeal. *See* Tenn. R. App. P. 13(c). However, in the instant action, the Appellees have not disputed the authenticity of the copies of court documents in the Appellant Grandparents' brief. Indeed, Mother's brief specifically cites the Grandparents' brief on numerous occasions to demonstrate both the existence and contents of each of the cited documents not included in the record. Consequently, we treat these facts as established by stipulation of the parties.

Father had filed a dissolution of marriage action in Tennessee. Second, the Indiana court found that T.M.J. was in need of temporary guardians, and that it was in the best interest of T.M.J. that temporary guardians be appointed. Finally, the Indiana court stated, “The court further finds that [the Grandparents] are suitable persons to serve as said temporary guardians *at least until such time as a determination is made in Tennessee with regard to custody in the dissolution of marriage action.*” (emphasis added).

On June 15, 2005, Mother filed a show cause petition against Father in the Tennessee Chancery Court seeking return of the child to Tennessee and dissolution of the April 2005 temporary restraining order enjoining Mother from interfering with Father’s custody of T.M.J. In support of the motion, Mother asserted that on March 21, 2005, Father had told her that T.M.J. was in Tennessee. Mother further alleged that, sometime between March 21, 2005, and April 1, 2005, Father delivered T.M.J. to the custody of the Grandparents in Indiana, and then Father returned to Tennessee without the child. Father’s relocation of the child, Mother argued, was in violation of Tennessee Code Annotated section 36-6-108, the parental relocation statute, because no notice was given to Mother prior to his relocation of T.M.J. Mother contended that T.M.J. should be returned to Tennessee immediately, and that the Tennessee Chancery Court should make a determination as to a *pendente lite* shared parenting schedule. In her show cause petition, Mother argued that the Indiana court had no jurisdiction to decide custody or guardianship matters, since jurisdiction rightfully belonged to the Coffee County Chancery Court in Tennessee.

On July 7, 2005, Father filed his response to Mother’s show cause petition, admitting that an order of protection against Father was issued on April 13, 2005. Father denied, however, that he improperly removed T.M.J. from Tennessee and denied Mother’s assertion that the Indiana court did not have jurisdiction to make a custody determination.

On July 19, 2005, the Coffee County Chancery Court, the trial court below, issued an order on Mother’s show cause petition for return of the minor child to Tennessee. In this order, the Chancery Court found that Father took the child to Indiana on March 11, 2005, left the child in Indiana, and thereafter returned to Tennessee. The Chancellor found that Father’s complaint for divorce, filed in Tennessee, and the Grandparents’ petition for temporary guardianship, filed in Indiana, were filed on the same date, April 1, 2005. Because both Mother and Father were residents of Tennessee at the time Father filed his divorce complaint, the Chancery Court found that the State of Indiana did not have jurisdiction over the custody dispute. The Chancellor admonished the parties “[t]hat the minor child must be returned to Tennessee on the date and time this matter is set for full hearing, and that all parties must make sure that the minor child is in Tennessee on that date and time, or face contempt charges.”

On September 19, 2005, prior to the hearing set by the Tennessee Chancery Court, the Grandparents filed their intervening petition for child custody in the Tennessee Chancery Court, attaching a proposed permanent parenting plan. Notably, the plan proposed that the Grandparents be granted exclusive custody of the child, permitting neither Mother nor Father any residential time with the child.

When the Coffee County Chancery Court convened for the scheduled hearing on October 10, 2005, T.M.J. was not present at the hearing, as had previously been ordered. That evening, however, on October 10, the Grandparents arrived in Tennessee from Indiana with T.M.J. and transferred custody of the child to Mother. The next day, October 11, 2005, with T.M.J. back in Tennessee, the Chancery Court proceeded with the hearing on the Grandparents' petition to intervene.

On the first day of the hearing, the Grandparents filed a motion to dismiss as to the issue of child custody, arguing that the Tennessee court lacked subject matter jurisdiction to adjudicate the custody issue. In the motion, the Grandparents stated that "[a]fter conferring with each other and hearing from the parties and their counsel, the Honorable Larry R. Blanton [the Indiana Judge] and the Honorable Jerry Ledsinger [the Tennessee General Sessions Judge] agreed that the most appropriate and convenient forum to assume jurisdiction of the custody matter is the Circuit Court of Washington County, Indiana." The Grandparents asserted that the Uniform Child Custody Jurisdiction and Enforcement Act establishes that jurisdiction remains with the state which initially assumes jurisdiction unless such state has voluntarily relinquished jurisdiction, or the child, child's parents, and any party acting as the child's parent all reside outside of such state. Based on the foregoing, the Grandparents asked the Tennessee Chancery Court to dismiss the custody portion of the divorce action, or, in the alternative, grant *pendente lite* guardianship of T.M.J. to the Grandparents pending final disposition of the matter.

At the outset of the hearing, the Grandparents' petition to intervene in the Chancery divorce action was granted. The Grandparents then argued their motion to dismiss as to the issue of child custody, asserting that it should be dismissed for lack of subject matter jurisdiction because the Indiana temporary guardianship order made Indiana the appropriate forum for resolving the custody dispute. The Chancellor noted that the court found, at an earlier hearing, that the removal of T.M.J. to Indiana "was a ruse on the part of [Father] to divest this Court of jurisdiction" over the custody dispute. Consequently, the trial court denied this request, reiterating its concern that Father had committed a fraud on the court by removing the child from Tennessee in an attempt to divest the Tennessee courts of jurisdiction to make a custody determination. After a lengthy discussion on the issue, the Chancellor stated his position in plain terms:

We're not going to transfer it. I'm just going to tell you. I'm going to act on this case. This child is here. These parties are here. They filed a divorce here. They made use of the Tennessee courts. Indiana can beg, borrow, or steal or whatever they want to try to do to get jurisdiction of this case, but the law gives it to this court. This is where . . . the divorce was filed, and a ruse was worked. We found that earlier. . . . This man was trying to work this court, and I'm not going to have it.

With the motion to dismiss and the petition to intervene resolved, the Chancery Court then heard evidence on the issue of *pendente lite* guardianship of T.M.J. pending final disposition of the divorce.

On November 18, 2005, the Coffee County Chancery Court entered an order denying the Grandparents' motion to dismiss for lack of subject matter jurisdiction. The trial court determined that the Coffee County Chancery Court, located in Manchester, Tennessee, had "jurisdiction to hear the child custody matter despite the [Indiana order] appointing the [Grandparents] temporary guardians over [T.M.J.] entered on April 15, 2005."

Two weeks later, on December 1, 2005, the Coffee County Chancery Court entered an order on the Grandparents' petition to intervene and the issue of *pendente lite* custody of T.M.J. The order granted the Grandparents' petition to intervene, but awarded temporary custody of T.M.J. to Mother's cousin, Jennifer Posey, a non-party to the litigation. The Grandparents were given supervised visitation and telephone contact with T.M.J.<sup>3</sup> The Chancery Court noted that Mother's General Sessions order of protection against Father remained in full force and effect.

On December 8, 2005, the Grandparents filed an application for an extraordinary appeal pursuant to Rule 10 of the Tennessee Rules of Appellate Procedure. The application was granted on December 16, 2005.

On appeal, the only issue for this Court's determination is whether the Coffee County Chancery Court erred in concluding that it had jurisdiction over the child custody dispute. Although listed as an Appellee, on appeal, Father adopted the Grandparents' statement of the facts and legal arguments. Mother's petition is adverse to that of the Grandparents; she urges this Court to affirm the trial court's November 18, 2005 order finding that it had jurisdiction to resolve the child custody dispute.

The standard of review in child custody cases is governed by Rule 13(d) of the Tennessee Rules of Appellate Procedure. *Hass v. Knighton*, 676 S.W.2d 554, 555 (Tenn. 1984). Accordingly, the factual findings by the trial court are reviewed on appeal *de novo*, accompanied by a presumption of correctness, unless the evidence preponderates otherwise. Tenn. R. App. P. 13(d). The trial court's legal conclusions, however, are reviewed *de novo* and are not entitled to a presumption of correctness. *Bell v. Bell*, 2005 WL 415683, at \*4 (Tenn. Ct. App. Feb. 22, 2005). The determination of whether a trial court has subject matter jurisdiction is a question of law, reviewed *de novo* on appeal, with no presumption of correctness. *Wilson v. Tennessee Dep't of Correction*, 2006 WL 325933, at \*2 (Tenn. Ct. App. Feb. 13, 2006).

The Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), codified at Tennessee Code Annotated section 36-6-201, *et seq.*, was enacted to "[a]void jurisdictional competition and conflicts with the courts of other states," "[d]iscourage the use of the interstate system for continuing controversies over child custody," deter child abductions, avoid relitigation

---

<sup>3</sup> Subsequent to the trial court's December 1, 2005 award of temporary care of T.M.J. to Jennifer Posey, the Coffee County Chancery Court found that it was in the best interest of the child to be returned to the primary care of the Grandparents, pending a final disposition of the matter. Consequently, on February 6, 2006, the trial court entered an order returning temporary custody to the Grandparents.

of custody determinations by other states, and “facilitate the enforcement of custody decrees of other states.” T.C.A. § 36-6-202 (1)-(6) (2005). In furtherance of these objectives, the UCCJEA indicates that the child’s home state is normally the appropriate forum for an initial custody determination. *P.E.K. v. J.M.*, 52 S.W.3d 653, 660 (Tenn. Ct. App. 2001); *see* T.C.A. § 36-6-216(a)(1) (2005). In relevant part, section 36-6-216 provides:

**Jurisdiction to make custody determination.**—(a) Except as otherwise provided in § 36-6-219, a court of this state has jurisdiction to make an initial child custody determination only if:

(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six (6) months before the commencement of the proceeding and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

\* \* \*

(b) Subsection (a) is the exclusive jurisdictional basis for making a child-custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child-custody determination.

T.C.A. § 36-6-216(a)-(c).

In applying these provisions, three statutory definitions are necessary: the “home state” of the child; “child custody proceeding;” and “child custody determination.” First, the “home state” of the child includes “the state in which a child lived with a parent or a person acting as a parent for at least six (6) consecutive months immediately before the commencement of a child custody proceeding.” *Id.* § 36-6-205(7) (2005). Included within the UCCJEA definition of “child custody proceeding” are proceedings for divorce, guardianship, and protection from domestic violence “in which the issue may appear.” *Id.* § 36-6-205(4). Finally, the UCCJEA defines a “child custody determination” as “a judgment, decree or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child,” including temporary, initial, and permanent orders. *Id.* § 36-6-205(3).

Under the Tennessee statutes, once a Tennessee court has made a child custody determination consistent with the provisions of the UCCJEA, that court has “exclusive, continuing jurisdiction over the [child custody] determination.” *Id.* § 36-6-217(a). This exclusive, continuing jurisdiction continues until (1) a Tennessee court determines that neither the child nor one parent maintains a significant connection with Tennessee and that substantial evidence regarding the child’s care is no longer available in Tennessee, or (2) the Tennessee court or a court of another state finds that the child, the child’s parents, and any person acting as the child’s parents, do not presently reside in Tennessee. *Id.* § 36-6-217(a)(1)-(2).

On appeal, the Grandparents argue that the Tennessee Chancery Court was not the first court to make a child custody determination because the temporary restraining order against Mother was

not a “child custody determination” as contemplated by the UCCJEA. Consequently, the Grandparents argue, the Indiana court was the first to issue a child custody order, and therefore had continuing, exclusive jurisdiction of the child custody issue. Citing the UCCJEA, the Grandparents argue that the statutory prerequisites for the Tennessee court to modify a valid child custody determination by another state were not met in this case, *see* T.C.A. § 36-6-218, and that consequently the Tennessee court lacked the legal authority to modify the child custody decree of the Indiana court.

The Grandparents’ argument is premised on the assumption that the Indiana court was the first court to issue a child custody determination. This assumption is erroneous. On April 4, 2005, the Coffee County Chancery Court issued a temporary restraining order, enjoining Mother from interfering with Father’s custody of T.M.J. *See id.* § 36-6-205(3) (defining “child custody determination”). This injunctive order was entered eleven days before the Washington County Circuit Court in Indiana entered its order granting the Grandparents temporary guardianship of T.M.J. We find that this order was a “child custody determination” within the meaning of the UCCJEA. *See id.* § 36-6-205(3).

From the undisputed facts in this case, the Coffee County Chancery Court in Manchester, Tennessee, acted properly in making the initial custody determination. *See id.* § 36-6-216(a)(1). Tennessee was clearly T.M.J.’s “home state” within six months before the commencement of Father’s April 1, 2005 divorce action against Mother. Although T.M.J. was no longer in Tennessee when the divorce action was filed, both parents continued to reside in Tennessee, as evidenced by Father’s complaint for divorce. Having properly exercised its authority to make the initial custody determination consistent with the strictures of the UCCJEA, T.C.A. § 36-6-216(a), the Coffee County Chancery Court therefore had exclusive, continuing jurisdiction over the child custody issue in this case. *See id.* § 36-6-217(a). In *Cliburn v. Bergeron*, this Court explained:

The UCCJEA establishes a clear jurisdictional hierarchy to decide which court will have power to decide child custody and visitation cases. Like with the [Parental Kidnapping Prevention Act], at the top of the hierarchy is a court with exclusive continuing jurisdiction. If a court has entered a valid custody order . . . and one of the parties or the child continues to live in the state, that court has the exclusive right to decide if the order should be permanently modified. The court with exclusive continuing jurisdiction has what might be called “a right of first refusal.” Courts of other states may not modify an order (assuming a parent or child continues to live in the state that issued an order) unless the court that issued the order gives permission for another state to decide the issue.

*Cliburn v. Bergeron*, 2002 WL 31890868, at \*8 (Tenn. Ct. App. Dec. 31, 2002). Based on this “jurisdictional hierarchy,” the Grandparents’ arguments must fail. The Coffee County Chancery Court entered the first custody order regarding T.M.J., and it had authority to do so. Consequently, the Coffee County Chancery Court had continuing, exclusive jurisdiction regarding the custody of T.M.J. during the divorce proceedings. Absent any relinquishment of this jurisdictional priority—the



“right of first refusal”—by the Coffee County Chancery Court, it correctly concluded that, as between Tennessee and Indiana, it had jurisdiction over the custody of T.M.J.

The decision of the trial court is affirmed. Costs on appeal shall be assessed one-half against Appellants Leland K. Hattabaugh and Joy C. Hattabaugh, and one-half against Appellee Kenneth Len Jones, and their sureties, for which execution may issue, if necessary.

---

HOLLY M. KIRBY, JUDGE